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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/079,014	02/19/2002	Andrew L. Pansini	032698/3	5235

7590 10/22/2004

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EXAMINER

FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 10/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/079,014

Applicant(s)

PANSINI, ANDREW L.

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 15 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17 is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-10, 13, 14 and 16 is/are rejected.
- 7) ☒ Claim(s) 7, 11 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 3, 2004 has been entered.

2. The amendment filed September 3, 2004 fails to comply with 37 CFR 1.121(c) as claim 17 is still pending, but applicant did not present the claim.

3. Claims 1-3, 8, 9, 10 and 16 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 recites "elevational movement of the automatic fill device and overflow drain device relative to the tank is not restricted by any attachment to the tank". This limitation is not found in the original disclosure and is therefore considered to be new matter. Indeed, elevational movement of devices 20,60 is significantly restricted when adjustable member 80 is locked

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in place via adjusting means 84. Moreover, the bottom of the tank 12 would appear to significantly restrict downward elevational movement of member 80. Claims 8, 9 and 16 recite similar subject matter.

4. Claims 1-8 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 recites the heights of the devices 20,60 are "selectively" adjustable. This limitation is not found in the original disclosure and is therefore considered to be new matter. Indeed, selective movement of the devices 20,60 does not appear possible when they are both connected to a common adjustable member 80. Claim 4 recites similar subject matter.

5. Claims 4, 13 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 is unclear in that the fill device and overfill device are defined as being both "selectively movable" and "connected to each other in a fixed relationship."

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Claim 13 is redundant to claim 11, and claim 14 is redundant to claim 12.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 1, 2, 4, 5, 9 and 16, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Whitten, Jr. '111.

The Whitten, Jr. '111 (Whitten) reference (Fig. 3) discloses a tank/chamber 48 including a fill device A,B and a drain device C,D; a swimming pool 10; a vertically adjustable member 80; and a skimmer 14, as claimed. The fill and drain devices are "not restricted by any attachment to the tank", before they are mounted thereto, in the same sense as with

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applicant's disclosed invention. The fill and drain devices are "selectively and simultaneously adjustable" (i.e. able to be selectively and simultaneously adjusted), and are fixedly connected together (via 80).

8. Claims 1-5 and 8, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by St. Ledger.

The St. Ledger reference discloses a tank 3 including a fill device 20 and a drain device 15; a swimming pool 8; adjusting means 16,24,25; and a vertically adjustable member 80 (wall of 3), as claimed. The fill and drain devices are "not restricted by any attachment to the tank", before they are mounted thereto, in the same sense as with applicant's disclosed invention. The fill and drain devices are "selectively and simultaneously adjustable" (i.e. able to be selectively and simultaneously adjusted), and are fixedly connected together (via 3).

9. Claims 1-6, 8-10 and 16, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Schmidt.

The Schmidt reference discloses a tank/chamber 30 including a fill device 62 (col. 3 lns. 33-39) and a drain device 62 (col. 3 lns. 40-446; a swimming pool 10; adjusting means 68,70; a vertically adjustable member 64; and a skimmer 14, as claimed. The fill and drain devices are "not restricted by any attachment

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to the tank", since they are freely movable on the vertically adjustable member.

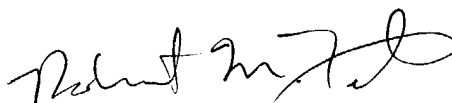
10. Applicant's arguments with respect to claims 1, 4, 8, 9 and 16 have been considered but are moot in view of the new ground(s) of rejection.

11. Claims 7, 11 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 17 is allowable.

12. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

13. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 703/308-1506 who can be most easily reached Monday through Thursday.



Robert M. Fetsuga
Primary Examiner
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